

SECOND REGULAR SESSION

HOUSE BILL NO. 1438

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE O'CONNOR.

Read 1st time January 10, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3599L.011

AN ACT

To repeal sections 407.1025, 407.1031, and 407.1034, RSMo, and to enact in lieu thereof five new sections relating to business franchises.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.1025, 407.1031, and 407.1034, RSMo, are repealed and five
2 new sections enacted in lieu thereof, to be known as sections 407.1025, 407.1031, 407.1034,
3 407.1047, and 407.1048, to read as follows:

407.1025. As used in sections 407.1025 to 407.1049, unless the context otherwise
2 requires, the following terms mean:

3 (1) "Administrative hearing commission", the body established in chapter 621, RSMo,
4 to conduct administrative hearings;

5 (2) "All-terrain vehicle", any motorized vehicle manufactured and used exclusively for
6 off-highway use which is fifty inches or less in width, with an unladen dry weight of six hundred
7 pounds or less, traveling on three, four or more low pressure tires, with a seat designed to be
8 straddled by the operator, and handlebars for steering control;

9 (3) "Coerce", to force a person to act in a given manner or to compel by pressure or
10 threat but shall not be construed to include the following:

11 (a) Good faith recommendations, exposition, argument, persuasion or attempts at
12 persuasion;

13 (b) Notice given in good faith to any franchisee of such franchisee's violation of terms
14 or provisions of such franchise or contractual agreement;

15 (c) Any other conduct set forth in section 407.1043 as a defense to an action brought

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 pursuant to sections 407.1025 to 407.1049; or

17 (d) Any other conduct set forth in sections 407.1025 to 407.1049 that is permitted of the
18 franchisor or is expressly excluded from coercion or a violation of sections 407.1025 to
19 407.1049;

20 (4) "Franchise", a written arrangement or contract for a definite or indefinite period, in
21 which a person grants to another person a license to use, or the right to grant to others a license
22 to use, a trade name, trademark, service mark, or related characteristics, in which there is a
23 community of interest in the marketing of goods or services, or both, at wholesale or retail, by
24 agreement, lease or otherwise, and in which the operation of the franchisee's business with
25 respect to such franchise is substantially reliant on the franchisor for the continued supply of
26 franchised new motorcycles [or], all-terrain vehicles, **or personal watercraft, and related** parts
27 and accessories for sale at wholesale or retail;

28 (5) "Franchisee", a person to whom a franchise is granted;

29 (6) "Franchisor", a person who grants a franchise to another person;

30 (7) "Motorcycle", a motor vehicle operated on two wheels;

31 (8) "New", when referring to motorcycles or all-terrain vehicles or parts, means those
32 motorcycles or all-terrain vehicles or parts which have not been held except as inventory, as that
33 term is defined in subdivision (4) of section 400.9-109, RSMo;

34 (9) "Person", a sole proprietor, partnership, corporation, or any other form of business
35 organization;

36 **(10) "Personal watercraft", a class of vessel as defined in section 306.010, RSMo.**

407.1031. 1. Any party seeking relief pursuant to the provisions of sections 407.1025
2 to 407.1049 may file an application for a hearing with the administrative hearing commission
3 within the time periods specified in this section. The application for a hearing shall comply with
4 the requirements for a request for agency action set forth in chapter 536, RSMo. Simultaneously,
5 with the filing of the application for a hearing with the administrative hearing commission, the
6 applicant shall send by certified mail, return receipt requested, a copy of the application to the
7 party or parties against whom relief is sought. [Within ten days of] **Upon** receiving a timely
8 application for a hearing, the administrative hearing commission shall enter an order fixing a
9 date, time and place for a hearing on the record. [Such hearing shall be within forty-five days
10 of the date of the order but the administrative hearing commission may continue the hearing date
11 up to twenty-five additional days by agreement of the parties or upon a finding of good cause.]
12 The administrative hearing commission shall send by certified mail, return receipt requested, a
13 copy of the order to the party seeking relief and to the party or parties against whom relief is
14 sought. The order shall also state that the party against whom relief is sought shall not proceed
15 with the initiation of its activity or activities until the administrative hearing commission issues

16 its final decision or order, and the party against whom relief is sought shall, within thirty
17 days of such order, file an answer or other responsive pleading directed to each claim for
18 relief set forth in the application for hearing. Failure to answer or otherwise respond
19 within such time frame may be deemed by the administrative hearing commission as an
20 admission of the grounds for relief set forth in the application for hearing.

21 2. Unless otherwise expressly provided in sections 407.1025 to 407.1049, the provisions
22 of chapter 536, RSMo, shall govern hearings and prehearing procedures conducted pursuant to
23 the authority of this section. **Any party may obtain discovery in the same manner, and under**
24 **the same conditions and requirements, as is or may hereafter be provided for with respect**
25 **to discovery in civil actions by rule of the supreme court of Missouri for use in the circuit**
26 **courts, and the administrative hearing commission may enforce discovery by the same**
27 **methods as provided by supreme court rule for use in civil cases.** The administrative hearing
28 commission shall issue a final decision or order, in proceedings arising pursuant to the provisions
29 of sections 407.1025 to 407.1049, within [forty-five] **ninety** days from the conclusion of the
30 hearing. **In any proceeding initiated pursuant to sections 407.1025 to 407.1049 involving**
31 **a matter requiring a franchisor to show good cause for any intended action being protested**
32 **by a franchisee, the franchisor shall refrain from taking the protested action if, after a**
33 **hearing on the matter before the administrative hearing commission, the commission**
34 **determines that good cause does not exist for the franchisor to take such action. The**
35 **franchisee may, if necessary, seek enforcement of the decision of the administrative hearing**
36 **commission pursuant to the provisions of section 407.1049. Venue for such proceedings**
37 **shall be in the circuit court of Cole County, or in the circuit court of the county in which**
38 **the franchisee resides or operates the franchise business. In determining any relief**
39 **necessary for enforcement of the decision of the administrative hearing commission, the**
40 **court shall defer to the commission's findings of fact, and review shall be limited to a**
41 **determination of whether the commission's decision was authorized by law and whether**
42 **the commission abused its discretion.** Any final decisions of the administrative hearing
43 commission shall be subject to review pursuant to a petition for review to be filed in the court
44 of appeals in the district in which the hearing, or any part of the hearing, is held and by delivery
45 of copies of the petition to each party of record, within thirty days after the mailing or delivery
46 of the final decision and notice of the final decision in such a case. **Appeal of the**
47 **administrative hearing commission's decision pursuant to this section shall not preclude**
48 **any action authorized by section 407.1049, brought in a court of competent jurisdiction and**
49 **requesting an award of legal or equitable relief, provided that if such an action is brought**
50 **solely for the purpose of enforcing a decision of the administrative hearing commission**
51 **which is on appeal pursuant to this subsection, the court in which such an action is pending**

52 **may hold in abeyance its judgment pending issuance of a decision by the court of appeals.**
53 Review pursuant to this section shall be exclusive and decisions of the administrative hearing
54 commission reviewable pursuant to this section shall not be reviewable in any other proceeding,
55 and no other official or court shall have power to review any such decision by an action in the
56 nature of mandamus or otherwise, except pursuant to the provisions of this section. The party
57 seeking review shall be responsible for the filing of the transcript and record of all proceedings
58 before the administrative hearing commission with the appropriate court of appeals.

59 3. Any franchisee receiving a notice from a franchisor pursuant to the provisions of
60 sections 407.1025 to 407.1049, or any franchisee adversely affected by a franchisor's acts or
61 proposed acts described in the provisions of sections 407.1025 to 407.1049, shall be entitled to
62 file an application for a hearing before the administrative hearing commission for a
63 determination as to whether the franchisor has good cause for its acts or proposed acts.

64 4. Not less than sixty days before the effective date of the initiation of any enumerated
65 act pursuant to subdivisions (5), (6), (7) and (14) of section 407.1034, a franchisor shall give
66 written notice to the affected franchisee or franchisees, by certified mail, return receipt requested,
67 except as follows:

68 (1) Upon the initiation of an act pursuant to subdivision (5) of section 407.1034, such
69 notice shall be given not less than fifteen days before the effective date of such act only if the
70 grounds for the notice include the following:

71 (a) Transfer of any ownership or interest in the franchised dealership without the consent
72 of the motorcycle or all-terrain vehicle franchisor;

73 (b) Material misrepresentation by the motorcycle or all-terrain vehicle franchisee in
74 applying for the franchise;

75 (c) Insolvency of the motorcycle or all-terrain vehicle franchisee or the filing of any
76 petition by or against the motorcycle or all-terrain vehicle franchisee under any bankruptcy or
77 receivership law;

78 (d) Any unfair business practice by the motorcycle or all-terrain vehicle franchisee after
79 the motorcycle or all-terrain vehicle franchisor has issued a written warning to the motorcycle
80 or all-terrain vehicle franchisee to desist from such practice;

81 (e) Conviction of the motorcycle or all-terrain vehicle franchisee of a crime which is a
82 felony;

83 (f) Failure of the motorcycle or all-terrain vehicle franchisee to conduct customary sales
84 and service operations during customary business hours for at least seven consecutive business
85 days unless such closing is due to an act of God, strike or labor difficulty or other cause over
86 which the motorcycle or all-terrain vehicle franchisee has no control; or

87 (g) Revocation of the motorcycle or all-terrain vehicle franchisee's license;

88 (2) Upon initiation of an act pursuant to subdivision (7) of section 407.1034, such notice
89 shall be given within sixty days of the franchisor's receipt of a written proposal to consummate
90 such sale or transfer and the receipt of all necessary information and documents generally used
91 by the franchisor to conduct its review. **The franchisor shall acknowledge in writing to the**
92 **applicant the receipt of the information and documents and if the franchisor requires**
93 **additional information or documents to complete its review, the franchisor shall notify the**
94 **applicant within fifteen days of the receipt of the information and documents. If the**
95 **franchisor fails to request additional information and documents from the applicant within**
96 **fifteen days after receipt of the initial forms, the sixty-day time period for approval shall**
97 **be deemed to run from the initial receipt date. If a timely request is made, the sixty-day**
98 **time period for approval shall run from receipt of the supplemental requested information.**
99 **In no event shall the total time period for approval exceed seventy-five days from the date**
100 **of the receipt of all necessary information and documents generally used by the franchisor**
101 **to conduct its review.** The franchisor's notice of disapproval shall also specify the reasonable
102 standard which the franchisor contends is not satisfied and the reason the franchisor contends
103 such standard is not satisfied. Failure on the part of the franchisor to provide such notice shall
104 be conclusively deemed an approval by the franchisor of the proposed sale or transfer to the
105 proposed transferee. A franchisee's application for a hearing shall be filed with the
106 administrative hearing commission within fifteen days from receipt of such franchisor's notice;
107 (3) Pursuant to paragraphs (a) and (b) of subdivision (14) of section 407.1034, such
108 notice shall be given within sixty days of the franchisor's receipt of a deceased or incapacitated
109 franchisee's designated family member's intention to succeed to the franchise or franchises or of
110 the franchisor's receipt of the personal and financial data of the designated family member,
111 whichever is later.

112 5. A franchisor's notice to a franchisee or franchisees pursuant to subdivisions (5), (6),
113 (7) and (14) of section 407.1034 shall contain a statement of the particular grounds supporting
114 the intended action or activity which shall include any reasonable standards which were not
115 satisfied. The notice shall also contain at a minimum, on the first page thereof, a conspicuous
116 statement which reads as follows: "NOTICE TO FRANCHISEE: YOU MAY BE ENTITLED
117 TO FILE A PROTEST WITH THE MISSOURI ADMINISTRATIVE HEARING
118 COMMISSION IN JEFFERSON CITY, MISSOURI, AND HAVE A HEARING IN WHICH
119 YOU MAY PROTEST THE CONTENTS OF THIS NOTICE. ANY ACTION MUST BE
120 FILED WITHIN FIFTEEN DAYS FROM RECEIPT OF THIS NOTICE."

121 6. When more than one application for a hearing is filed with the administrative hearing
122 commission, the administrative hearing commission may consolidate the applications into one
123 proceeding to expedite the disposition of all relevant issues.

124 7. In all proceedings before the administrative hearing commission pursuant to this
125 section and section 407.1034, where the franchisor is required to give notice pursuant to
126 subsection 5 of this section, the franchisor shall have the burden of proving by a preponderance
127 of the evidence that good cause exists for its actions. In all other actions, the franchisee shall
128 have the burden of proof.

 407.1034. Notwithstanding the terms of any franchise agreement, the performance,
2 whether by act or omission, by a [motorcycle or all-terrain vehicle] franchisor of any or all of the
3 following acts enumerated in this section are hereby defined as unlawful practices, the remedies
4 for which are set forth in section 407.1043:

5 (1) To engage in any conduct which is capricious, in bad faith, or unconscionable and
6 which causes damage to a [motorcycle or all-terrain vehicle] franchisee or to the public;
7 provided, that good faith conduct engaged in by [motorcycle or all-terrain vehicle] franchisors
8 as sellers of new motorcycles, all-terrain vehicles, **or personal watercraft**, or **related parts and**
9 **accessories** or as holders of security interests therein, in pursuit of rights or remedies accorded
10 to sellers of goods or to holders of security interests pursuant to the provisions of chapter 400,
11 RSMo, uniform commercial code, shall not constitute unfair practices pursuant to sections
12 407.1025 to 407.1049;

13 (2) To coerce any [motorcycle or all-terrain vehicle] franchisee to accept delivery of any
14 new motorcycle, motorcycles, all-terrain vehicles, **personal watercraft**, equipment, parts or
15 accessories therefor, or any other commodity or commodities which such [motorcycle or
16 all-terrain vehicle] franchisee has not ordered after such [motorcycle or all-terrain vehicle]
17 franchisee has rejected such commodity or commodities. It shall not be deemed a violation of
18 sections 407.1025 to 407.1049 for a [motorcycle or all-terrain vehicle] franchisor to require a
19 [motorcycle or all-terrain vehicle] franchisee to have an inventory of parts, tools and equipment
20 reasonably necessary to service the motorcycles [or], all-terrain vehicles, **or personal watercraft**
21 sold by a [motorcycle or all-terrain vehicle] franchisor; or new motorcycles [or], all-terrain
22 vehicles, **or personal watercraft** reasonably necessary to meet the demands of dealers or the
23 public;

24 (3) To unreasonably refuse to deliver in reasonable quantities and within a reasonable
25 time after receipt of orders for new motorcycles [or], all-terrain vehicles, **or personal watercraft**
26 such [motorcycles or all-terrain vehicles] **products** as are so ordered and as are covered by such
27 franchise and as are specifically publicly advertised by such [motorcycle or all-terrain vehicle]
28 franchisor to be available for immediate delivery; provided, however, the failure to deliver any
29 motorcycle [or], all-terrain vehicle, **or personal watercraft** shall not be considered a violation
30 of sections 407.1025 to 407.1049 if such failure is due to an act of God, work stoppage, or delay
31 due to a strike or labor difficulty, shortage of products or materials, freight delays, embargo or

32 other cause of which such [motorcycle or all-terrain vehicle] franchisor has no control;

33 (4) To coerce any [motorcycle or all-terrain vehicle] franchisee to enter into any
34 agreement with such [motorcycle or all-terrain vehicle] franchisor or to do any other act
35 prejudicial to such [motorcycle or all-terrain vehicle] franchisee, by threatening to cancel any
36 franchise or any contractual agreement existing between such [motorcycle or all-terrain vehicle]
37 franchisor and [motorcycle or all-terrain vehicle] franchisee; provided, however, that notice in
38 good faith to any [motorcycle or all-terrain vehicle] franchisee of such [motorcycle or all-terrain
39 vehicle] franchisee's violation of any provisions of such franchise or contractual agreement shall
40 not constitute a violation of sections 407.1025 to 407.1049;

41 (5) To terminate, cancel or refuse to continue any franchise **without good cause**, directly
42 or indirectly through the actions of the franchisor, unless such new [motorcycle or all-terrain
43 vehicle] franchisee substantially defaults in the performance of such franchisee's reasonable and
44 lawful obligations under such franchisee's franchise, or such [new motorcycle or all-terrain
45 vehicle] franchisor discontinues the sale in the state of Missouri of such franchisor's products
46 which are the subject of the franchise:

47 (a) Notwithstanding the terms of any franchise agreement to the contrary, good cause to
48 terminate, cancel or refuse to continue any franchise agreement shall not be established based
49 upon the fact that the [motorcycle or all-terrain vehicle] franchisee owns, has an investment in,
50 participates in the management of or holds a franchise agreement for the sale or service of
51 another make or line of new motorcycles [or], all-terrain vehicles, **or personal watercraft** or the
52 [motorcycle or all-terrain vehicle] dealer has established another make or line of [new
53 motorcycles or all-terrain vehicles] **such products** or service in the same dealership facilities as
54 those of the [motorcycle or all-terrain vehicle] franchisor prior to February 1, 1998, or such
55 establishment is approved in writing by the franchisee and the franchisor. However, a franchisor
56 may require a franchisee to maintain a reasonable line of credit for each franchise and to comply
57 with each franchisor's reasonable requirements concerning capital, management and facilities.
58 If the franchise agreement requires the approval of the franchisor, such approval shall be
59 requested in writing by the franchisee and the franchisor shall approve or disapprove such a
60 request in writing within sixty days of receipt of such request. A request from a franchisee shall
61 be deemed to have been approved if the franchisor fails to notify the franchisee, in writing, of
62 its disapproval within sixty days after its receipt of the written request;

63 (b) In determining whether good cause exists, the administrative hearing commission
64 shall take into consideration the existing circumstances, including, but not limited to, the
65 following factors:

- 66 a. The franchisee's sales in relation to sales in the market;
67 b. The franchisee's investment and obligations;

- 68 c. Injury to the public welfare;
- 69 d. The adequacy of the franchisee's service facilities, equipment, parts and personnel in
70 relation to those of other franchisees of the same line-make;
- 71 e. Whether warranties are being honored by the franchisee;
- 72 f. The parties' compliance with their franchise agreement;
- 73 g. The desire of a franchisor for market penetration or a market study, if any, prepared
74 by the franchisor or franchisee are two factors which may be considered;
- 75 h. The harm to the franchisor;
- 76 (6) To prevent by contract or otherwise, any [motorcycle or all-terrain vehicle] franchisee
77 from changing the capital structure of the franchisee's franchise of such [motorcycle or all-terrain
78 vehicle] franchisee or the means by or through which the franchisee finances the operation of the
79 franchisee's franchise, provided the [motorcycle or all-terrain vehicle] franchisee at all times
80 meets any reasonable capital standards agreed to between the [motorcycle or all-terrain vehicle]
81 franchisee and the [motorcycle or all-terrain vehicle] franchisor and grants to the [motorcycle or
82 all-terrain vehicle] franchisor a purchase money security interest in the new motorcycles [or],
83 all-terrain vehicles, [new] **or personal watercraft and related** parts and accessories purchased
84 from the [motorcycle or all-terrain vehicle] franchisor;
- 85 (7) (a) Prevent, by contract or otherwise, any sale or transfer of a franchisee's franchise
86 or franchises or interest or management thereof; provided, if the franchise specifically permits
87 the franchisor to approve or disapprove any such proposed sale or transfer, a franchisor shall only
88 be allowed to disapprove a proposed sale or transfer if the interest being sold or transferred when
89 added to any other interest owned by the transferee constitutes fifty percent or more of the
90 ownership interest in the franchise and if the proposed transferee fails to satisfy any standards
91 of the franchisor which are in fact normally relied upon by the franchisor prior to its entering into
92 a franchise, and which relate to the proposed management or ownership of the franchise
93 operations or to the qualification, capitalization, integrity or character of the proposed transferee
94 and which are reasonable. A franchisee may request, at any time, that the franchisor provide a
95 copy of the standards which are normally relied upon by the franchisor to evaluate a proposed
96 sale or transfer and a proposed transferee;
- 97 (b) The franchisee and the prospective franchisee shall cooperate fully with the
98 franchisor in providing information relating to the prospective transferee's qualifications,
99 capitalization, integrity and character;
- 100 (c) In the event of a proposed sale or transfer of a franchise, the franchisor shall be
101 permitted to exercise a right of first refusal to acquire the franchisee's assets or ownership if:
102 a. The franchise agreement permits the franchisor to exercise a right of first refusal to
103 acquire the franchisee's assets or ownership in the event of a proposed sale or transfer;

- 104 b. Such sale or transfer is conditioned upon the franchisor or franchisee entering a
105 franchise agreement with the proposed transferee;
- 106 c. The exercise of the right of first refusal shall result in the franchisee and the
107 franchisee's owners receiving the same or greater consideration and the same terms and
108 conditions as contracted to receive in connection with the proposed sale or transfer;
- 109 d. The sale or transfer does not involve the sale or transfer to an immediate member or
110 members of the family of one or more franchisee owners, defined as a spouse, child, grandchild,
111 spouse of a child or grandchild, brother, sister or parent of the franchisee owner, or to the
112 qualified manager, defined as an individual who has been employed by the franchisee for at least
113 two years and who otherwise qualifies as a franchisee operator, or a partnership or corporation
114 controlled by such persons; and
- 115 e. The franchisor agrees to pay the reasonable expenses, including attorney's fees which
116 do not exceed the usual, customary and reasonable fees charged for similar work done for other
117 clients, incurred by the proposed transferee prior to the franchisor's exercise of its right of first
118 refusal in negotiating and implementing the contract for the proposed sale or transfer of the
119 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment of such expenses
120 and attorney's fees shall be required if the franchisee has not submitted or caused to be submitted
121 an accounting of those expenses within fourteen days of the franchisee's receipt of the
122 franchisor's written request for such an accounting. Such accounting may be requested by a
123 franchisor before exercising its right of first refusal;
- 124 (d) For determining whether good cause exists for the purposes of this subdivision, the
125 administrative hearing commission shall take into consideration the existing circumstances,
126 including, but not limited to, the following factors:
- 127 a. Whether the franchise agreement specifically permits the franchisor to approve or
128 disapprove any proposed sale or transfer;
- 129 b. Whether the interest to be sold or transferred when added to any other interest owned
130 by the proposed transferee constitutes fifty percent or more of the ownership interest in the
131 franchise;
- 132 c. Whether the proposed transferee fails to satisfy any standards of the franchisor which
133 are in fact normally relied upon by the franchisor prior to its entering into a franchise, and which
134 are related to the proposed management or ownership of the franchise operations or to the
135 qualification, capitalization, integrity or character of the proposed transferee which are
136 reasonable;
- 137 d. Injury to the public welfare;
- 138 e. The harm to the franchisor;
- 139 (8) To prevent by contract or otherwise any [motorcycle or all-terrain vehicle] franchisee

from changing the executive management of [motorcycle or all-terrain vehicle] **the** franchisee's business, except that any attempt by a [motorcycle or all-terrain vehicle] franchisor to demonstrate by giving reasons that such change in executive management will be detrimental to the distribution of the [motorcycle or all-terrain vehicle] franchisor's [motorcycles] **products** shall not constitute a violation of this subdivision;

(9) To impose unreasonable standards of performance upon a [motorcycle or all-terrain vehicle] franchisee;

(10) To require a [motorcycle or all-terrain vehicle] franchisee at the time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by sections 407.1025 to 407.1049;

(11) To prohibit directly or indirectly the right of free association among [motorcycle or all-terrain vehicle] franchisees for any lawful purpose;

(12) To provide any term or condition in any lease or other agreement ancillary or collateral to a franchise, which term or condition directly or indirectly violates the provisions of sections 407.1025 to 407.1049;

(13) Upon any termination, cancellation or refusal to continue any franchise or any discontinuation of any line-make or parts or products related to such line-make by a franchisor, fail to pay reasonable compensation to a franchisee as follows:

(a) Any new, undamaged and unsold motorcycles [or], all-terrain vehicles, **or personal watercraft** in the franchisee's inventory of either the current model year or purchased from the franchisor within one hundred twenty days prior to receipt of a notice of termination or nonrenewal, provided the motorcycle or all-terrain vehicle has less than twenty miles registered on the odometer, including mileage incurred in delivery from the franchisor or in transporting the motorcycle or all-terrain vehicle between dealers for sale, at the dealer's net acquisition cost;

(b) The current parts catalog cost to the dealer of each new, unused, undamaged and unsold part or accessory if the part or accessory is in the current parts catalog, less applicable allowances. If the part or accessory was purchased by the franchisee from an outgoing authorized franchisee, the franchisor shall purchase the part for either the price in the current parts catalog or the franchisee's actual purchase price of the part, whichever is less;

(c) The depreciated value determined pursuant to generally accepted accounting principles of each undamaged sign owned by the franchisee which bears a trademark or trade name used or claimed by the franchisor if the sign was purchased from, or purchased at the request of, the franchisor;

(d) The fair market value of all special tools, data processing equipment and [motorcycle or all-terrain vehicle] service equipment owned by the franchisee which were recommended in writing and designated as special tools and equipment and purchased from, or purchased at the

request of, the franchisor within three years of the termination of the franchise, if the tools and equipment are in usable and good condition, except for reasonable wear and tear; and

(e) The franchisor shall pay the franchisee the amounts specified in this subdivision within ninety days after the tender of the property subject to the franchisee providing evidence of good and clear title upon return of the property to the franchisor. Unless previous arrangements have been made and agreed upon, the franchisee is under no obligation to provide insurance for the property left after one hundred eighty days;

(14) To prevent or refuse to honor the succession to a franchise or franchises by any legal heir or devisee under the will of a franchisee, under any written instrument filed with the franchisor designating any person as the person's successor franchisee, or pursuant to the laws of descent and distribution of this state; provided:

(a) Any designated family member of a deceased or incapacitated franchisee shall become the succeeding franchisee of such deceased or incapacitated franchisee if such designated family member gives the franchisor written notice of such family member's intention to succeed to the franchise or franchises within forty-five days after the death or incapacity of the franchisee, and agrees to be bound by all of the terms and conditions of the current franchise agreement, and the designated family member meets the current reasonable criteria generally applied by the franchisor in qualifying franchisees. A franchisee may request, at any time, that the franchisor provide a copy of such criteria generally applied by the franchisor in qualifying franchisees;

(b) The franchisor may request from a designated family member such personal and financial data as is reasonably necessary to determine whether the existing franchise agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request;

(c) If the designated family member does not meet the reasonable criteria generally applied by the franchisor in qualifying franchisees, the discontinuance of the current franchise agreement shall take effect not less than ninety days after the date the franchisor serves the required notice on the designated family member pursuant to subsection 5 of section 407.1031;

(d) The provisions of this subdivision shall not preclude a franchisee from designating any person as the person's successor by written instrument filed with the franchisor, and if such an instrument is filed, it alone shall determine the succession rights to the management and operation of the franchise; and

(e) For determining whether good cause exists, the administrative hearing commission shall take into consideration the existing circumstances, including, but not limited to, the following factors:

a. Whether the franchise agreement specifically permits the franchisor to approve or disapprove any successor;

b. Whether the proposed successor fails to satisfy any standards of the franchisor which are in fact normally relied upon by the franchisor prior to the successor entering into a franchise, and which relate to the proposed management or ownership of the franchise operation or to the qualification, capitalization, integrity or character of the proposed successor and which are reasonable;

c. Injury to the public welfare;

d. The harm to the franchisor;

(15) To coerce, threaten, intimidate or require a franchisee under any condition affecting or related to a franchise agreement, or to waive, limit or disclaim a right that the franchisee may have pursuant to the provisions of sections 407.1025 to 407.1049. Any contracts or agreements which contain such provisions shall be deemed against the public policy of the state of Missouri and are void and unenforceable. Nothing in this section shall be construed to prohibit voluntary settlement agreements;

(16) To initiate any act enumerated in this subsection on grounds that it has advised a franchisee of its intention to discontinue representation at the time of a franchisee change;

(17) To require, coerce, or attempt to coerce any franchisee in this state to refrain from, or to terminate, cancel, or refuse to continue any franchise based upon participation by the franchisee in the management of, investment in, or the acquisition of a franchise for the sale of any other line of new motorcycle, all-terrain vehicle, or personal watercraft or related products in the same or separate facilities as those of the franchisor. This subdivision shall not apply unless the franchisee maintains a reasonable line of credit for each make or line of new vehicle, the franchisee remains in compliance with the franchise and any reasonable facilities requirements of the franchisor, and no change is made in the principal management of the franchise. The reasonable facilities requirement shall not include any requirement that a franchisee establish or maintain exclusive facilities, personnel, or display space, when such requirements or any of them would not otherwise be justified by reasonable business considerations. Before the addition of a line make-up to the dealership facilities, the franchisee must first request consent of the franchisor, if required by the franchise agreement. Any decision of the franchisor with regard to dualing of two or more franchises shall be granted or denied within sixty days of a written request from the franchisee. The franchisor's failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's request;

(18) To fail or refuse to offer to sell to all franchisees for a line-make every motorcycle, all-terrain vehicle, or personal watercraft sold or offered for sale to any franchisee of that line-make; provided, however, that the failure to deliver any such products shall not be considered a violation of this section if the failure is not arbitrary, or

248 is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of
249 materials, a freight embargo, or other cause over which the franchisor has no control. A
250 franchisor may impose reasonable requirements on the franchisee including, but not
251 limited to, the purchase of reasonable quantities of advertising materials, the purchase of
252 special tools required to properly service a product, the undertaking of sales-person or
253 service-person training related to the product, the meeting of reasonable display and
254 facility requirements as a condition of receiving a product, or other reasonable
255 requirements; provided, that if a franchisor requires a franchisee to purchase essential
256 service tools with a purchase price in the aggregate of more than seven thousand five
257 hundred dollars in order to receive a particular model of new motorcycle, all-terrain
258 vehicle, or personal watercraft, the franchisor shall upon written request provide such
259 franchisee with a good faith estimate in writing of the number of vehicles of that particular
260 model that the franchisee will be allocated during that model year in which the tools are
261 required to be purchased.

407.1047. 1. For purposes of this section, the term "relevant market area" means:

2 (1) For a proposed franchisee or a franchisee who plans to relocate his or her place
3 of business in a county having a population which is greater than one hundred thousand
4 inhabitants, the area within a radius of six miles of the intended site of the proposed or
5 relocated franchisee. The six-mile distance shall be determined by measuring the distance
6 between the nearest surveyed boundary of the existing franchisee's principal place of
7 business and the nearest surveyed boundary line of the proposed or relocated franchisee's
8 principal place of business; or

9 (2) For a proposed franchisee or a franchisee who plans to relocate his or her place
10 of business in a county having a population of one hundred thousand or fewer inhabitants,
11 the area within a radius of ten miles of the intended site of the proposed or relocated
12 franchisee, or the county line, whichever is closer to the intended site. The ten-mile
13 distance shall be determined by measuring the distance between the nearest surveyed
14 boundary line of the existing franchisee's principal place of business and the nearest
15 surveyed boundary line of the proposed or relocated franchisee's principal place of
16 business.

17 2. As used in this section, the terms "relocate" and "relocation" shall not include
18 the relocation of a franchisee within two miles of its established place of business.

19 3. Before a franchisor enters into a franchise establishing or relocating a franchisee
20 within a relevant market area in which the same line-make is represented, the franchisor
21 shall give written notice to each franchisee of the same line-make in the relevant market
22 area of its intention to establish an additional franchisee or to relocate an existing

23 franchisee within that relevant market area.

24 **4. Within thirty days after receiving the notice provided for in subsection 3 of this**
25 **section, or within thirty days after the end of any appeal procedure provided by the**
26 **franchisor, a franchisee may bring an action pursuant to section 407.1031 to determine**
27 **whether good cause exists for the establishment or relocation of a proposed franchisee.**

28 **5. This section shall not apply to the reopening or replacement in a relevant market**
29 **area of a closed dealership that has been closed within the preceding year, if the established**
30 **place of business of the reopened or replacement franchisee is within two miles of the**
31 **established place of business of the closed dealership.**

32 **6. In determining whether good cause exists for establishing or relocating an**
33 **additional franchisee for the same line-make, the court shall take into consideration the**
34 **following circumstances, including but not limited to, the following:**

35 **(1) Permanency of the investment;**

36 **(2) Effect on the retail motor vehicle business and the consuming public in the**
37 **relevant market area;**

38 **(3) Whether the establishment or relocation is injurious or beneficial to the public**
39 **welfare;**

40 **(4) Whether the franchisees of the same line-make in that relevant market area are**
41 **providing adequate competition and convenient consumer care for the motor vehicles of**
42 **that line-make in the market area, including the adequacy of motor vehicle sales and**
43 **qualified service personnel;**

44 **(5) Whether the establishment or relocation of the franchisee would promote**
45 **competition;**

46 **(6) Growth or decline of the population and the number of new motor vehicle**
47 **registrations in the relevant market area; and**

48 **(7) Effect on the relocating franchisee of a denial of its relocations into the relevant**
49 **market area.**

50 **7. The remedies and relief available pursuant to section 407.1049 shall apply to this**
51 **section.**

407.1048. 1. Each franchisor shall specify in writing to each of its franchisees in
2 **this state the franchisee's obligations for preparation, delivery, and warranty service on**
3 **its products. The franchisor shall compensate the franchisee for warranty service required**
4 **of the franchisee by the franchisor. The franchisor shall provide the franchisee with the**
5 **schedule of compensation to be paid to the franchisee for parts, work, and service, and the**
6 **time allowance for the performance of the work and service.**

7 **2. The schedule of compensation shall include reasonable compensation for**

8 diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and
9 performance of warranty work and service shall be reasonable and adequate for the work
10 to be performed. In the determination of what constitutes reasonable compensation
11 pursuant to this section, the principal factor to be given consideration shall be the
12 prevailing wage rates being paid by franchisees in the community in which the franchisee
13 is doing business, and in no event shall the compensation of a franchisee for warranty labor
14 be less than the rates charged by the franchisee for like service to retail customers for
15 nonwarranty service and repairs, provided that such rates are reasonable.

16 3. A franchisor shall not:

17 (1) Fail to perform any warranty obligation;

18 (2) Fail to include in written notices of franchisor recalls to owners of new
19 motorcycles, all-terrain vehicles, and personal watercraft, and to franchisees the expected
20 date by which necessary parts and equipment will be available to franchisees for the
21 correction of the defects; and

22 (3) Fail to compensate any of the franchisees in this state for repairs caused by the
23 recall.

24 4. All claims made by a franchisee pursuant to this section for labor and parts shall
25 be paid within thirty days after their approval. All claims shall be approved or
26 disapproved by the franchisor within thirty days after their receipt on a proper form
27 generally used by the franchisor and containing the usually required information. Any
28 claims not specifically disapproved in writing within thirty days after the receipt of the
29 form shall be considered as approved and payment shall be made within sixty days of
30 receipt of the form. A claim which has been approved and paid may not be charged back
31 to the franchisee unless the franchisor can show that the claim was fraudulent, false, or
32 unsubstantiated, except that a charge back for false or fraudulent claims shall not be made
33 more than two years after payment, and a charge back for unsubstantiated claims shall not
34 be made more than fifteen months after payment. A franchise shall maintain all records
35 of warranty repairs, including the related time records of its employees, for at least two
36 years following payment of any warranty claim.

37 5. A franchisor shall compensate the franchisee for franchisor-sponsored sales or
38 service promotion events, programs, or activities in accordance with established guidelines
39 for such events, programs, or activities.

40 6. All claims made by a franchisee pursuant to subsection 5 of this section for
41 promotion events, programs, or activities shall be paid within ten days after their approval.
42 All claims shall be approved or disapproved by the franchisor within thirty days after their
43 receipt on a proper form generally used by the franchisor and containing the usually

44 **required information. Any claim not specifically disapproved in writing within thirty days**
45 **after the receipt of the form shall be considered as approved and payment shall be made**
46 **within sixty days of receipt of the form. The franchisor has the right to charge back any**
47 **claim for twelve months after the later of the close of the promotion event, program, or**
48 **activity or the date of the payment.**